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June 13, 1997

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Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Suite 222
Washington, D.C. 20054

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RE: Comments
IB Docket No. 95-91
GEN Docket No. 90-357

Dear Mr. Caton:

On behalf of Alabama Broadcasters Association, there is submitted herewith an original and nine copies of its comments in response to the Commission's Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rule Making ("Further Notice") in Docket 90-357, adopted March 3, 1997.

If you should have any questions concerning these Comments, please contact the undersigned.

Sincerely,


M. Scott Johnson

Enclosure

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Establishment of Rules and Policies for the)	IB Docket No. 95-91
Digital Audio Radio Satellite Service in the)	GEN Docket No. 90-357
2310-2360 MHz Frequency Band)	

Directed To: The Commission

**COMMENTS OF THE
ALABAMA BROADCASTERS ASSOCIATION**

The Alabama Broadcasters Association (the "Association"), pursuant to Section 1.415 of the Commission Rules, hereby submits its comments in response to the Commission's Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rule Making ("Further Notice") in Docket 90-357, adopted March 3, 1997, and released on the same day. With respect thereto, the following is stated:

In the Further Notice, the Commission seeks comment on its proposal to permit the deployment of terrestrial repeaters, or "gap-fillers," on an "as-needed" basis by satellite DARS licensees to meet their service requirements. Specifically, the Commission seeks comment on the appropriate regulatory structure for satellite DARS terrestrial repeaters ("terrestrial repeaters") and on its tentative conclusion to prohibit the use of terrestrial repeaters for local program origination.^{1/}

Members of the Association include various radio and television stations throughout the State of Alabama. The Association's members are stations from both large and small markets,

^{1/} Further Notice at ¶ 142.

stand-alone stations and combined operations, as well as multiple owners. As such, it is appropriate for the Association to voice the concerns of Alabama broadcasters with respect to the Commission's proposal for terrestrial repeaters.

A. The Commission Should Not Adopt Rules on Satellite DARS Terrestrial Repeaters Because It Has Still Not Received Necessary Technical Information.

It is not possible to provide pertinent and comprehensive comments on the Further Notice at this time because, even at this stage of the proceeding, there is scant technical information available in this docket about terrestrial repeaters. Consequently, the Association believes that rulemaking on terrestrial repeaters is not ripe and should be postponed until more detailed information becomes available.

Throughout this proceeding, the Commission has sought, but has never received, adequate technical information on terrestrial repeaters. In its June 15, 1995 Notice of Proposed Rulemaking, the Commission stated that it did "not have sufficient information" on terrestrial repeaters to propose rules at that time.^{2/} In the Notice, the Commission explained that:

[n]one of the satellite DARS applications . . . provided the necessary technical information in their applications to demonstrate how these complementary terrestrial repeater networks would be implemented . . . [u]ntil such information is available and applicants demonstrate how these complimentary terrestrial networks would be implemented in the overall satellite system design, we cannot determine if gap-fillers should be permitted and what rules should govern their use.^{3/}

Two years later, despite the filing of comments on the Notice and the conclusion of the satellite DARS auction, there is still only fragmentary information available about terrestrial repeaters. In a recent Order, released April 30, 1997, the Commission granted the National

^{2/} Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Notice of Proposed Rulemaking ("Notice"), IB Docket No. 95-91, released June 15, 1997, at ¶ 56.

^{3/} Notice at ¶¶ 55-56.

Association of Broadcaster's ("NAB") request for an extension of time for filing comments on the Further Notice, accepting NAB's argument that "it is impossible to comment on the issue of terrestrial repeaters" until the two DARS applicants, Satellite CD Radio and American Mobile Radio Corporation (AMRC), submit amended technical information.^{4/} These amendments have now been filed, but they still do not provide adequate information for the Commission to determine if terrestrial repeaters should be permitted and, if so, what rules should govern their use. AMRC has indicated that 2.5 MHz within the 2332.5-2345 MHz spectrum allotted to it will be used by terrestrial repeaters, but it has said nothing about other technical specifications or about the locations of the terrestrial repeaters, except that they "will be deployed in selected urban locations."^{5/} Satellite CD Radio's discussion of terrestrial repeaters was even more brief, simply stating that "[t]errestrial repeaters will also be placed in the cores of large urban cities. . . ."^{6/}

Clearly, the information on terrestrial repeaters recently submitted by Satellite CD Radio and AMRC fails to address the Commission's concern that not enough information is available for the Commission to adopt rules for terrestrial repeaters. We request that the Commission postpone its rulemaking until more information is made available by Satellite CD Radio and AMRC. In this case, hasty rulemaking in the absence of pertinent information could lead to a

^{4/} In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Order, IB Docket No. 95-91, released April 30, 1997, at ¶2.

^{5/} In re Application of American Mobile Radio Corporation For a System Authorization in the 2.3 GHz Satellite Digital Audio Radio Service, Amendment, File Nos. 26/27-DSS-LA-93 and 10/11-DSS-P-93, May 16, 1997, Appendix A.

^{6/} In the Matter of Satellite CD Radio, Inc. Application to Launch and Operate a Digital Audio Radio Satellite Service in the 2320-2332.5 MHz Frequency Band, Submission and Amendment to Application of Satellite CD Radio, Inc., File No. 71-SAT-AMEND97, May 16, 1997, at 9-10.

regulatory structure that will be too weak to govern what could become a very significant addition to terrestrial radio transmission in the United States.

B. The Commission Should Not Permit Blanket Licensing of Satellite DARS Terrestrial Repeaters.

Throughout this proceeding, the Association has been adamantly opposed to the licensing of satellite DARS. It is the Association's long held position that the licensing of satellite DARS would not be in the public interest due to the expected adverse economic impact on local terrestrial radio broadcasting.^{7/} However, if the Commission is to proceed with the licensing of satellite DARS or associated terrestrial repeaters, it should, at the very least, avoid the blanket licensing of terrestrial repeaters by establishing limits on the number of terrestrial repeaters in a community or area and requiring the individual licensing of each terrestrial repeater.

No parties to this proceeding have demonstrated a need for the blanket licensing of terrestrial repeaters. Blanket licensing of terrestrial repeaters, without demonstrated need, would exacerbate the overall adverse economic impact of satellite DARS service, as mentioned above and demonstrated in numerous comments earlier in this proceeding.^{8/} Further, if the Commission were to adopt such policies, it would in effect introduce a whole new broadcasting terrestrial service, which was not the intent of this proceeding.

C. The Commission Should Adopt Its Proposal to Prohibit the Use of Satellite DARS Terrestrial Repeaters for Local Program Origination.

We would also like to reiterate our opposition to the use of terrestrial repeaters for local programming origination. Neither Satellite CD Radio nor AMRC has proposed such use, and the Commission's proposed rules, as originally submitted by Satellite CD Radio, expressly forbids

^{7/} See ABA Comments at 5-7.

^{8/} See e.g., NAB Comments at 18.

such use.^{9/} If the Commission proceeds with its rulemaking on terrestrial repeaters, it should adopt its proposed rules to prohibit the use of terrestrial repeaters to transmit locally originated programming.^{10/}

Local program origination would fundamentally change the nature of the satellite DARS system. In the Further Notice, the Commission discussed the potential adverse effects of satellite DARS on local radio stations and concluded that it would be minimal, given that satellite DARS would be a national service that would carry national advertising (if it carried advertising at all) and that “owners of satellite DARS receivers will continue to allocate a significant share of their listening time to terrestrial radio in order to hear music or news of local interest.”^{11/} Local program origination from terrestrial repeaters, however, would undermine these national aspects of a satellite-based system and would increase competitive pressures on local radio stations. While we continue to disagree with the Commission’s overall conclusions about the minimal effects of DARS on existing radio stations, we believe local origination from the terrestrial repeaters would be particularly detrimental. Once the satellite DARS system is in place, there could be tremendous pressure to obtain a waiver allowing use of the repeaters for local origination, especially if the satellite system is financially unsuccessful. Consequently, if the Commission proceeds with this rulemaking, it should adopt a strict rule, with no waiver option, prohibiting local program origination from terrestrial repeaters.

^{9/} Further Notice, Appendix C, Proposed Rules and Regulations to Add to 47 C.F.R. Part 25 of the Commission’s Rules.

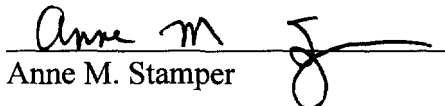
^{10/} Further Notice at ¶ 142.

^{11/} Further Notice at ¶ 21.

Respectfully Submitted,

ALABAMA BROADCASTERS ASSOCIATION

By: 
M. Scott Johnson

By: 
Anne M. Stamper

Its attorneys

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Dated: June 13, 1997

CERTIFICATE OF SERVICE

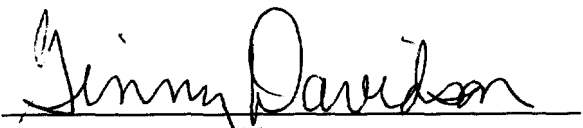
I, Ginny Davidson, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 13th day of June, 1997, caused to be sent by First-Class U.S. mail, postage-prepaid, a copy of the foregoing **COMMENTS OF THE ALABAMA BROADCASTERS ASSOCIATION** to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
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Commissioner Rachelle B. Chong
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Commissioner Susan Ness
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